

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

RICKY EUGENE ROSS §
VS. § CIVIL ACTION NO. 1:15-CV-330
RICHARD D. ALFORD, ET AL. §

ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Ricky Eugene Ross, a former prisoner, proceeding *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983 against Richard D. Alford, Aaron Tompkins, Vivian Davis, Marilyn Harmon, Brenda Grogan, and Monica Goodman.

The court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge has submitted a Report and Recommendation of United States Magistrate Judge. The Magistrate Judge recommends granting defendants' motion for summary judgment.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration of all the pleadings and the relevant case law, the court concludes that plaintiff's objections lack merit. The defendants are entitled to summary judgment because plaintiff failed to exhaust administrative remedies before filing this action, as required 42 U.S.C. § 1997e(a). In addition, the competent summary judgment

evidence does not demonstrate that plaintiff was exposed to an unreasonably high level of environmental tobacco smoke, or that the defendants were deliberately indifferent to his serious medical needs by allowing plaintiff to be exposed to environmental tobacco smoke. Therefore, the defendants are also entitled to summary judgment on the merits of plaintiff's claims.

ORDER

Accordingly, plaintiff's objections (docket entry #24) are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge (docket entry #22) is **ADOPTED**. Defendants' motion for summary judgment (docket entry #20) is **GRANTED**. A final judgment will be entered in accordance with the Magistrate Judge's recommendation.

So **ORDERED** and **SIGNED** September 12, 2018.



Ron Clark, Senior District Judge